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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re A.I., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

A.I.,

Defendant and Appellant.

G051759

(Super. Ct. No. DL049618)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Julian W.
Bailey, Judge. Affirmed.

Robert V. Vallandigham, Jr., under appointment by the Court of Appeal,
for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Charles C. Ragland and Allison V. Hawley, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

Defendant A.I. challenges the sufficiency of the evidence to support the court's finding he conspired to commit petty theft. We affirm the judgment.

FACTS

Two loss prevention agents working undercover at an Albertsons grocery store on December 29, 2014, noticed then 16-year-old defendant and another young male walking toward the store's liquor aisle. This drew the agents' attention because both defendant and his companion were carrying skateboards. In the agents' experience, young people often carry skateboards for use as weapons and to permit a fast escape.

Upon arriving at the liquor aisle, defendant handed his skateboard to his companion. Defendant then grabbed a bottle of vodka and a case of beer. He and his companion headed straight for the nearest exit.

When defendant noticed the loss prevention agents behind him, he and his companion ran for the exit in a "full on sprint." As the two males exited the store, one agent yelled, "Stop. We are loss prevention. Stop." The agent wrapped his arms around defendant's shoulders. The other agent identified himself as loss prevention, told defendant to stop resisting, and tried to help hold him still. Defendant, who still held onto the stolen liquor, thrashed around and tried to throw the agents off him.

Defendant's companion hovered nearby and threatened, "You better let my friend go." He physically tried to move the agents off defendant.

The contract between Albertsons and the agents' employer allows loss prevention agents to detain only those individuals who "actually leave the store with the product." Consequently, one of the agents told defendant's companion to leave, that it was none of his business, and that defendant had committed a crime and would be detained. The companion tried to be physically intimidating, but left after the agent threatened to arrest him for interference.¹

The agents detained defendant in the store manager's office. They contacted the police after defendant refused to cooperate, to stay seated, and to give requested information, and after he kicked the agents in the shins and ran toward the door. He admitted he had been drinking.

When a responding officer arrived, defendant volunteered (not in response to a question), "I will admit I hit these fools."

In an interview at the police station later that day, defendant stated that earlier that day, he had been drinking alcohol at a park with four to five members of the Orange County Criminal Streets Gang. He and "Jesse" "decided to go steal more beer." They went to an Albertsons store. After they entered the store, defendant handed his skateboard to his companion, then grabbed a bottle of vodka and a case of beer. He then ran toward the entrance because he knew that employees were watching him. An employee grabbed him. Defendant intended to hit him over the head with the bottle of vodka. He swung his arms and pushed away because he did not want to be arrested.

¹

One of the agents later positively identified a suspect apprehended by the police as defendant's companion. Defendant's companion was interviewed at the police department on the evening of December 29, 2014.

Defendant appeared to be mildly intoxicated at the time of the interview.

A Welfare and Institutions Code section 602 petition alleged defendant committed second degree robbery, conspiracy to commit shoplifting, and battery. The petition alleged the following overt acts as to the conspiracy count: “1. Meet at El Lemon Park. 2. Go into Albertsons at 940 N. Tustin Avenue in Orange. 3. Take Amsterdam Vodka and Budweiser from alcohol section of Albertsons.”

After a contested jurisdictional hearing, the court found true the petition’s allegations, declared defendant a ward of the court, and ordered him to spend 165 days in juvenile hall with credit for 45 days served.

DISCUSSION

Substantial Evidence Supports the Court’s Finding Defendant Conspired to Commit Petty Theft

Defendant contends no substantial evidence showed he and his companion agreed to commit petty theft, and therefore the court’s finding he conspired to commit petty theft violated his right to due process. He “maintains that two people deciding to steal beer is not evidence of agreement to conspire to commit petty theft of such beer,” arguing that defendant’s statement to police that he and Jesse “decided” to steal alcohol is a “cryptic description.” Defendant further asserts the “evidence of pre-offense planning in this case is particularly sparse.” Finally, he emphasizes that the loss prevention agents allegedly testified “they did not consider [defendant’s companion] to be a shoplifting suspect.”

A state court conviction that is unsupported by sufficient evidence violates the due process clause of both the federal and the state Constitutions. (*People v. Rowland* (1992) 4 Cal.4th 238, 269.) In determining whether sufficient evidence supports a conviction, a reviewing court asks “whether, after viewing the evidence in the light most

favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” (*Ibid.*) The reviewing court considers “the whole record” and “presume[s] in support of the judgment the existence of every fact the [trier of fact] could reasonably have deduced from the evidence.” (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.) ““Conflicts and even testimony [that] is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends. [Citation.] We resolve neither credibility issues nor evidentiary conflicts; we look for substantial evidence,” i.e., “evidence that is reasonable, credible, and of solid value.” (*Ibid.*) “A reversal for insufficient evidence ‘is unwarranted unless it appears “that upon no hypothesis whatever is there sufficient substantial evidence to support” the jury’s verdict.” (*Ibid.*) “The same standard applies when the conviction rests primarily on circumstantial evidence.” (*People v. Kraft* (2000) 23 Cal.4th 978, 1053.)

The elements of conspiracy are that (1) the defendant and another person specifically intended to agree to commit an offense and to commit the elements of that offense, and (2) at least one party to the agreement committed an overt act in furtherance of the conspiracy. (*People v. Jurado* (2006) 38 Cal.4th 72, 120.) These elements “may be proven with circumstantial evidence, ‘particularly when those circumstances are the defendant’s carrying out the agreed-upon crime.’” (*People v. Vu* (2006) 143 Cal.App.4th 1009, 1024-1025.) “To prove an agreement, it is not necessary to establish the parties met and expressly agreed” (*Id.* at p. 1025.) Evidence is sufficient to prove an agreement “““if it supports an inference that the parties positively or tacitly came to a mutual understanding to commit a crime. [Citation.] The existence of a conspiracy may be inferred from the conduct, relationship, interests, and activities of the alleged conspirators before and during the alleged conspiracy.””” (*People v. Maciel* (2013) 57 Cal.4th 482, 515–516.) Each member of the conspiracy is liable for the acts of other

members in carrying out the common purpose. (*In re Hardy* (2007) 41 Cal.4th 977, 1025.)

Here, defendant's statement that he and Jesse "decided" to steal more beer constitutes substantial evidence that they *agreed* to commit petty theft. The agreement element of conspiracy requires a mutual understanding, not a formal meeting or express agreement.

In any event, the males' conduct, relationship, interests, and activities before and during the alleged conspiracy provide additional evidence of the conspiracy. Defendant and his companion drank alcohol together with some gang members at a park before the twosome went to Albertsons with their skateboards, where they headed directly for the liquor aisle. Defendant carried the alcohol while his companion held the skateboards as they exited the store. They started running after they noticed the loss prevention agents. When the agents tried to detain defendant (who had the alcohol), his companion demanded that the agents free defendant and attempted to physically intimidate them.

Finally, defendant's assertion that the agents testified "they did not consider [his companion] to be a shoplifting suspect" fails both factually and on its persuasive merits. In fact, the agents essentially testified they focused on defendant because he was the person they were allowed to detain under the terms of the governing contract. The court could reasonably infer from this testimony that the agents' identification of defendant as the actual shoplifting "suspect" was based on the contract's limits on who the agent was allowed to detain as a "shoplifter."

DISPOSITION

The judgment is affirmed.

IKOLA, J.

WE CONCUR:

MOORE, ACTING P. J.

FYBEL, J.